

Albany Water AWB

Property Disposition Policy

The Albany Water AWB (referred to herein as the “AWB”) is required by Section 2896 of the Public Authorities Law to adopt by resolution comprehensive guidelines, to be annually reviewed and approved by the AWB, regarding the use, awarding, monitoring and reporting of contracts for the disposal of Property. The following guidelines (the “Guidelines”) are adopted pursuant to such requirement and are applicable with respect to the use, awarding, monitoring and reporting of all Property Disposition Contracts which are (i) entered into by the AWB and (ii) solicited or awarded by the AWB on behalf of the City of Albany’s Department of Water & Water Supply. (Referred to herein as the “Water Department”).

Definitions

1. **"PAAA"** shall mean the Public Authorities Accountability Act of 2005, as amended from time to time, including in 2009.
2. **"Contracting Officer"** shall mean the officer or employee of the AWB who shall be appointed by resolution of the AWB to be responsible for the disposition of Property. The Contracting Officer shall be the Water Department’s Commissioner.
3. **"Dispose" or "disposal"** shall mean transfer of title or any other beneficial interest in personal or real property in accordance with these guidelines.
4. **"Fair Market Value (FMV)"** shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace.
5. **"Property"** shall mean personal property in excess of five thousand dollars in value, real property, and any inchoate or other interest in such property owned by the AWB or the Water Department, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.
6. **"Property Disposition Contracts"** shall mean written agreements for the sale, lease, transfer or other disposition of Property.
7. **"Real Property"** shall mean real property and interests therein.

Duties of the AWB under the PAAA

In accordance with the PAAA, the AWB and/or the Water Department, as the case may be, shall have the following duties and responsibilities:

- A. **Adoption of Guidelines.** The AWB has adopted by Resolution, these comprehensive Guidelines detailing an operative policy for the Water Department regarding the use, awarding, monitoring and reporting of contracts for the disposal of AWB/Water Department property.
- B. **Contracting Officer.** The AWB shall designate one or more individuals to serve as the Contracting Officer(s) for purposes of disposing of AWB/Water Department property. The Contracting Officer(s) may, but need not be the same individual(s) for each instance where the

AWB purports to dispose of certain of its property. As noted above, unless otherwise designated by subsequent resolution, the Commissioner is the Contracting Officer.

- C. **Review and Updating of Guidelines.** The AWB shall meet at intervals of not less than one (1) year from the date of adoption of the most recent set of Guidelines for purposes of reviewing and, if necessary, revising the Guidelines.
- D. **Filing of Guidelines.** The AWB shall, by the 31st day of March of each year, file with the Comptroller of the State of New York a copy of its most recently adopted Guidelines.
- E. **Posting of Guidelines.** A full and complete copy of the most recently adopted Guidelines shall be posted on the AWB website. Said website shall be updated no less than annually for purposes of ensuring that the Guidelines posted thereon reflect the most recently adopted Guidelines of the AWB.
- F. **Inventory Controls and Accountability.** The AWB shall maintain adequate inventory controls and accountability for all AWB/Water Department property. For purposes of these Guidelines, the phrase "adequate inventory controls and accountability" shall mean steps and procedures to secure, monitor and protect such property including a periodic physical inventory not less than every two years with reconciliation to the previous inventory listing. These controls are set forth, to the extent same apply as detailed therein, in the AWB's Fixed Asset Policy.
- G. **Periodic Review.** The AWB shall periodically inventory property to determine what property, both real and personal, may be disposed of in accordance with the terms of these Guidelines.
- H. **Report of Periodic Review.** Upon completion of each periodic review as outlined above, the AWB shall cause a report to be completed, outlining which, if any of the AWB properties may be disposed of in accordance with these Guidelines.
- I. **Transfer of Properties.** Upon entering into an agreement for the transfer or disposal of any of its properties, the AWB shall take all necessary actions to arrange for the prompt transfer or disposal of the subject property.
- J. **Report of Real Property.** The AWB shall, on not less than an annual basis, publish a report listing all real property owned by the AWB/Water Department at the time thereof, as well as a listing and full description of all real and personal property disposed of by the AWB/Water Department during the reporting period, including the amount received and the name of the purchaser of each piece of property. A copy of such annual report shall be forwarded to the following officers of the State of New York, as well as any other officers as the legislature may designate from time to time: the State Comptroller, the Director of the Division of Budget, the Commissioner of General Services and the legislature.

Principal Duties of Contracting Officer

The **Contracting Officer**, as designated under Definitions (2), is responsible for the supervision and direction over the custody, control and disposition of Property and responsible for the AWB's compliance with, and enforcement of, these guidelines. The Contracting Officer shall: (a) maintain adequate inventory controls and accountability systems for all Property under the AWB's control; (b) periodically inventory such Property to determine which Property shall be disposed of; (c) transfer or dispose of such Property as promptly as possible in accordance with these guidelines; and (d) produce and submit reports pursuant to Section IV (B) of these guidelines.

A. Property Disposition Contracts

A. Reason(s) for Use of Property Disposition Contracts

Property Disposition Contracts may be entered into for the purpose of disposing of Property which is no longer necessary or useful for the operations of the AWB or the Water Department to warrant retention, if the disposition of such Property will result in cost savings or other benefits to the AWB or the Water Department, the disposition thereof will result in the receipt of valuable consideration or other benefits by the AWB or the Water Department, or the disposition is of neutral or nominal value to the parties.

B. Method of Disposition

The AWB may dispose of Property for no less than the Fair Market Value by sale, exchange, or transfer, for cash, credit or other Property, with or without warranty, upon such terms and conditions as are determined by the Contracting Officer, except as otherwise permitted by this Section I (B) and Section I (D)(4) (below).

C. Appraisals

No disposition of Real Property or any interest in Real Property shall be made unless an appraisal of such Property has been made by an independent appraiser and included in the record of the transaction. Further, no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

In addition to the circumstances permitted by Section I (D) (4) (below), the AWB may dispose of Property for less than Fair Market Value when the value of the transaction is nominal and the Property Disposition Contract is temporary and revocable. For such transactions, the requirements of Sections I (D) (5), (6) and (7) (also below) do not apply.

D. Award of Property Disposition Contracts; Selection Criteria for Property Disposition Contracts

1. ***All sales or other dispositions of Property*** shall be conducted in accordance with these Guidelines by or under the supervision of the Contracting Officer.
2. ***All Property Disposition Contracts*** shall be made after publicly advertising for bids unless the criteria set forth below in the Guidelines at Section III (C) (3) have been met for such contracts to be made by negotiation or public auction. Whenever public advertising for bids is required, (i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and

conditions, as shall permit full and free competition consistent with the value and nature of the Property; (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

3. ***Property Disposition Contracts*** may be negotiated or made by public auction without regard to the criteria set forth above in the Guidelines at Section III (C) (2) but subject to obtaining such competition as the Contracting Officer determines is feasible under the circumstances, if (i) the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of by publicly advertising for bids, would adversely affect the state or local market for such property, and the estimated Fair Market Value of such property and other satisfactory terms of disposal can be obtained by negotiation; (ii) the Fair Market Value of the Property does not exceed fifteen thousand dollars; (iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the Property, or have not been independently arrived at in open competition; (iv) the disposition of Property will be to the state or any political subdivision, and the estimated Fair Market Value of the Property and other satisfactory terms of disposal are obtained by negotiation; (v) under the circumstances permitted by Section III.C.4, or (vi) such action is otherwise authorized by law.
4. ***Property may not be disposed of for less than Fair Market Value*** unless the following criteria are met: (i) the property is transferred to a government or other public entity and the terms and conditions of the transfer require that the ownership and use of the property will remain with the government or any other public entity; (ii) the purpose of the transfer is within the purpose, mission or governing statute of the public AWB; or (iii) if the transfer is other than to a governmental entity and would not be consistent with the AWB's mission, purpose or governing statute, the AWB shall provide written notification to the governor, speaker of the assembly and temporary president of the senate. The governor, senate or assembly may deny the transfer. The governor or either house of the legislature will take action within sixty days of receiving notification of the proposed transfer from January through June. If the notification is received by the legislature from July through December, the legislature may take any action within sixty days of January first of the following year. In the event that there is no denial within sixty days of the notification to the governor, senate and assembly, the AWB may effectuate the transfer.
5. ***In the event the AWB proposes that property be disposed of for less than Fair Market Value***, the following information must be provided to the AWB members and the public: (i) a full description of the property; (ii) an appraisal of the Fair Market Value of the property and any other information establishing the Fair Market Value sought by the AWB of Trustees; (iii) a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of

jobs created or preserved as required by the transfer, the benefits to the communities in which the property is situated (iv) a statement of the value to be received as compared to the Fair Market Value; (v) the names of any private parties participating in the transfer and a statement of the value to the private party if different than the statement in (iv) above; (vi) the names of other private parties who have made an offer for such an asset, the value offered, and the purpose for which the asset was sought to be used.

6. **Before approving the disposition of property for less than Fair Market Value**, the AWB members must consider the information described in paragraph 5 above and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.
7. **The Contracting Officer shall transmit a statement explaining the circumstances of the negotiated disposition of Property by at least ninety (90) days prior** to such disposal to each of the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State legislature, and the Authorities Budget Office, and a copy thereof shall be preserved in the files of the AWB. Such a statement shall be prepared in connection with a negotiated disposition of Property of any of the following: (i) any personal property which has an estimated Fair Market Value in excess of fifteen thousand dollars; (ii) any Real Property that has an estimated Fair Market Value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses iii and iv of this Section.; (iii) any Real Property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars; (iv) any Real Property or related personal property disposed of by exchange, regardless of value, or any Property any part of the consideration for which is Real Property.
8. **To the extent that Property Disposition Contracts are competitively awarded, such awards shall be made upon receipt and evaluation of bids or proposals** or other information obtained from persons/firms responding to a request for proposals or other form of solicitation on the basis of the criteria specified in the request for proposals or other solicitation. The Contracting Officer shall document the processes by which Property is sold or otherwise disposed of, by making a record summarizing the nature and scope of the Property disposed, the name of each person or organization submitting, or requested to submit, a bid or proposal, the price or other consideration bid and received, and the basis for selection of both the purchaser and method of disposition of the Property.

E. Approval Process for Property Disposition Contracts

In addition to any other approvals required by law, the award of Property Disposition Contracts and any related determinations made in connection therewith shall be approved as follows:

1. **Property Disposition Contracts in amounts equal to or less than \$250,000** and related determinations shall be approved by the Contracting Officer, the Finance Committee Chair and the Chairman of the AWB.

2. **Property Disposition Contracts in amounts greater than \$250,000 - \$999,999** and related determinations shall be approved by the members of the AWB.
3. **Property Disposition of \$1 million dollars or more** are to be approved by the AWB and the City of Albany as per the Operations Agreement Article IX, Section 9.1 Disposition of Property (B), (C) and (D).

General

A. Implementation of Guidelines: The Contracting Officer is empowered to prepare such supplemental procedures as may be required to effectively implement these Guidelines, copies of which shall be provided to AWB members.

B. Property Transaction Notices: The Contracting Officer is to prepare and submit the Property Transaction Notices. Section 2897(6)(d) of Public Authorities Law requires public authorities to submit to the Authorities Budget Office a written explanation of the circumstances involving the disposal of property through a negotiated transaction not less than 90 days prior to the scheduled date of that transaction. This requirement applies to the following property:

- i. Personal property having an estimated fair market value greater than \$15,000;
- ii. Real property having an estimated fair market value greater than \$100,000, except that any real property disposed of by lease or exchange;
- iii. Real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of \$15,000;
- iv. Real property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property;
- v. Related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

The report must contain the following information:

- ✓ Description of the parties involved in the property transaction;
- ✓ Justification for disposing of property by negotiation;
- ✓ Identification of property, including its location;
- ✓ Estimated fair market value of the property;
- ✓ Proposed sale price of the property;
- ✓ Size of the property; and
- ✓ Expected date of sale of property.

C. End of Year Reporting: Within ninety days of the end of the fiscal year, the Contracting Officer shall also prepare and submit to the AWB a report listing all Real Property of the AWB and the Water Department. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the AWB or the Water Department and the name of the purchaser for all such Property sold by the AWB or the Water Department during such period.

D. Effect of Awarded Contracts: These Guidelines are intended for the guidance of the officers and employees of the AWB and the Water Department only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or

benefit under, or by reason of, any requirement or provision hereof, or be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. In accordance with Section 2897.5 of the Public Authorities Law, a deed, bill of sale, lease, or other instruments executed by or on behalf of the AWB or the Water Department, purporting to transfer title or any other interest in Property shall be conclusive evidence of compliance with these guidelines insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of compliance with these guidelines prior to the closing.

Disposal of Property through a Negotiated Transaction

Section 2897(6) (d) of the Public Authorities Law requires public authorities to submit a written explanation of the circumstances involving the disposal of property through a negotiated transaction to the Authorities Budget Office (ABO) not less than 90 days prior to the scheduled date of the transaction.

Adopted by the Albany Water AWB as of: August 28, 2015

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